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CHARLES ELMORE CROPLEY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 879

ELBERT J. BURNS, Alias E. J. Burns,
Petitioner,

vs.

STATE OF ALABAMA.

MOTION FOR STAY OF EXECUTION OF JUDGMENT

G. ERNEST JONES,
Of Birmingham, Alabama,
Counsel for Petitioner.

RODERICK BEDDOW,
HORACE C. ALFORD,
All of Birmingham, Alabama,
Of Counsel for Petitioner.

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To the Honorable Justices of the Supreme Court of
the United States:

Now comes Elbert J. Burns by his counsel of record and makes known to the court the following facts:

1. Petitioner is a white male citizen of the State of Alabama and did on the 29th day of January, 1945, file in the Supreme Court of the United States his petition for Writ of Certiorari to the Supreme Court of the State of Alabama, to review a judgment of that court affirming the judgment of the Circuit Court of Jefferson County, Alabama, pursuant to which judgment your Petitioner now stands sentenced to death, and at the same time filed in this court his brief and argument in support of said petition for Writ of Certiorari, and filed a complete certified copy of the record of the cause in the Supreme Court of the State of Alabama.

2. Your Petitioner avers that the judgment sought to be reviewed was rendered by the Supreme Court of Alabama on

June 15th, 1944, that your Petitioner filed application for a re-hearing of said judgment which was overruled and denied by the Supreme Court of Alabama on November 2nd, 1944, and date of execution of your Petitioner fixed for January 12, 1945; your Petitioner further avers that his attorney, Horace C. Alford, did make known to the Chief Justice of the Supreme Court of Alabama his intention to seek a review in the Supreme Court of the United States, of said judgment, and did orally apply for a stay of execution pending a decision by the Supreme Court of the United States and was informed by the Chief Justice of the Supreme Court of Alabama that said court had considered the matter in conference and had instructed the Chief Justice to inform Horace C.Alford as counsel for Petitioner, that said application for stay of execution would be denied; your Petitioner further avers that his counsel of record in this court, O. Ernest Jones, conferred by long distance telephone with the Chief Justice of the Supreme Court of Alabama with regard to a stay of execution and was authorized by said Chief Justice of the Supreme Court of Alabama to say that Petitioner's application for stay of execution was denied and was informed by the Chief Justice that it would be useless to file formal written application to the Supreme Court of Alabama for such stay of execution, but that the court had already informally denied the same; and your Petitioner further avers that his counsel of record in this court (O. Ernest Jones) did inform the Governor of Alabama by letter of the informal denial of a stay of execution by the Supreme Court of Alabama, and the Governor of Alabama granted an executive reprieve postponing execution of the sentence of death upon your Petitioner from January 12, 1945 to February 16, 1945.

3. Your Petitioner further avers that he did on January 29, 1945, at the time of filing his petition for Writ of Certiorari as hereinbefore recited in paragraph 1 hereof, file his Motion for Leave to Proceed in Forma Pauperis in this court; and included therein on page 15 thereof a motion for an Order Suspending the Execution of the Sentence of Death imposed upon this Petitioner pending final decision by the Supreme Court of the United States in the Petitioner's proceeding for a Writ of Certiorari to the Supreme Court of Alabama; and your Petitioner attaches hereto and files herewith and incorporates herein at this point as fully as though here set out, a printed copy of said Motion for Leave to Proceed in Forma Pauperis.

4. In addition to the facts set out in the Motion for Leave to Proceed in Forma Pauperis (which said Motion was prepared prior to January 2nd, 1945, and before counsel of record in this court had fully considered the record), your Petitioner says that he was denied due process of law in the trial court below in the following additional particulars:-

(a) The trial judge arbitrarily refused to make any investigation with regard to the sanity of your Petitioner pursuant to the provisions of Sec. 488, Title 15, Code of Alabama, refusing to consider an affidavit of Horace C. Alford and Dora Burns (record pages 91½ and 92½), and constituting himself both judge and witness, basing his refusal to consider, or to make any investigation with regard to Petitioner's sanity, upon the judge's own personal knowledge of Petitioner without stating for the purpose of the record the facts within the knowledge of the Judge, (Record pages 90 to 93), and the Supreme Court of Alabama approved this procedure.

5. Your Petitioner verily believes that his petition for Writ of Certiorari is meritorious. He is advised by counsel and upon such advice believes the fact to be that he was denied that due process of law guaranteed by the Fourteenth Amendment to the Federal Constitution;-

(a) in that the State of Alabama is about to carry into effect by the execution of this defendant in the electric chair a verdict rendered by a jury which under the Constitution and Laws of the State of Alabama was not legally constituted as a tribunal with authority under the Constitution of Alabama to consider and determine his guilt; that said jury was procured by a course of procedure which was so unfair, oppressive, discriminatory and unjust as to amount to a denial of the right of trial by a fair and impartial jury fairly and impartially selected;

(b) That the jury which found him guilty, upon which verdict he is to be executed, was selected pursuant to procedure authorized by Code of Alabama, 1940, Article 18, Title 62, Section 138, and Sections 205-228 inclusive, which laws discriminate against those persons who happen to be tried in the Circuit Court at Birmingham, Alabama, and the Circuit Court at Bessemer, Alabama, which discrimination violates the guarantee to the equal protection of the law to such persons or to due process of law, which guarantees are contained in the Fourteenth Amendment to the Federal Constitution, in that said laws set up an unfair, oppressive, discriminative procedure for the selecting and impaneling of a jury and deny to defendants on trial in capital cases in Jefferson County, Alabama, substantial rights given to such defendants on trial in

each of the other 66 counties of the State of Alabama, which discriminations against such defendants on trial in Jefferson County, Alabama, have no reasonable relation to any difference in circumstance or condition arising out of any condition pertaining to such defendants as against other defendants in other counties of the State;

(d) And your Petitioner says that he is about to be deprived of his life in the enforcement of the verdict of a tribunal (jury) selected, and impaneled by a procedure which is not only unfair, oppressive and discriminatory, but is the product of a revolutionary assumption of authority by the legislature of Alabama approved by the Supreme Court of Alabama, notwithstanding the express, emphatic, unequivocal and explicit terms of the denial of such power to the legislature of Alabama by Sections 45, 85, 105, 106 and 110 of the Constitution of the State of Alabama, and that Petitioner, about to suffer death as the result of such abandonment of a republican form of government by such legislative assumption of power denied to it by the people of the State of Alabama, in the Constitution of the State, appeals to this court for protection against an infringement upon the guarantee of a republican form of government contained in article 4, Section 4 of the Constitution of the United States.

(6) Your Petitioner has filed his brief and argument in support of his petition for Writ of Certiorari in this court and respectfully requests the Court to consider the aforesaid brief and argument as his brief and argument in support of this Motion for a Stay of Execution.

WHEREFORE, THE PREMISES CONSIDERED, your Petitioner respectfully moves the Court for an Order, Judgment, or Decree of the Court, staying execution of this Petitioner, now set for the 16th day of February, 1945, pending a decision of the Supreme Court of the United States upon your Petitioner's petition for Writ of Certiorari to the Supreme Court of the State of Alabama; and further moves the court for such Orders as may be necessary to cause the Supreme Court of Alabama to be legally notified of this court's action in the premises; and for all such other Orders, Judgments or Decrees as may be proper or necessary to cause the execution of the Judgment sought to be reviewed to be stayed pending this court's action in the premises; and your mover further prays for such other further general or special relief as may in the premises seem mete and proper, and your Petitioner will ever pray.

Respectfully submitted,

ELBERT J. BURNS

J. Ernest Jones,
Counsel for Petitioner.

Roderick Beddow

Horace C. Alford
Birmingham, Alabama,
of Counsel for Petitioner.

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No. .....

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Petitioner,

vs.

STATE OF ALABAMA.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS.

G. ERNEST JONES,
Of Birmingham, Alabama,
Counsel for Petitioner.

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All of Birmingham, Alabama,
Of Counsel for Petitioner.

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